

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Employment

Applying a five-part test, Judge Janice M. Stewart held that SAIF Corporation is an arm or instrument of the state. The court granted a defense motion to dismiss age discrimination claims filed by a former SAIF employee as barred by the 11th Amendment. The court declined to exercise supplemental jurisdiction over state and common law claims since the case was still in the discovery stage and because plaintiff would not be prejudiced by having to re-file the action in state court. Wilton v. SAIF Corp., CV 02-1092-ST (Opinion, Jan. 9, 2003).

Plaintiff's Counsel: Vance Day

Defense Counsel:

David A. Landrum

7 The Portland Police Bureau is not a proper defendant in an action against the City seeking damages and injunctive relief for state and federal claims of sex and disability discrimination. Judge Janice M. Stewart also dismissed claims asserted against the Police Chief in his official capacity, finding such claims redundant of claims asserted

against the City. Reyna v. City of Portland, CV 02-980-ST (F & R, Dec. 11, 2002; Adopted by Judge Robert E. Jones, Jan. 15, 2003).

Plaintiff's Counsel:

Stephen L. Brischetto

Defense Counsel:

Jennifer M. Johnston

7 Whether a former employee was a "qualified" person with a disability is an intensely factual determination not amenable to summary judgment. Judge John Jelderks denied a defense motion for summary judgment against federal Disability Act claims finding factual disputes about whether plaintiff had a disability and the reasonableness of proposed accommodations. The court also found factual issues over whether defendant had an available or "suitable" positions precluded summary judgment against claims under Oregon statutes for failure to reinstate an injured worker. Judge Jelderks granted judgment against plaintiff's common law wrongful discharge claim, where the claim was premised solely

upon the same statutory violations addressed in other claims. Hansen v. Block Graphics, Inc., CV 01-1566-JE (Dec. 31, 2002).

Plaintiff's Counsel:

Daniel Snyder

Defense Counsel:

Krishna Balasubramani

Contracts

Judge Anna J. Brown denied a defense motion for summary judgment in a lease dispute, finding genuine factual disputes as to issues relating to fraudulent concealment, individual liability for corporate actions, whether the lease created a security interest and whether the lessor waived a "time is of the essence" provision relative to lease payments. The court granted summary judgment against a breach of contract claim based upon conclusive evidence of mutual rescission. Milt's Flying Service, Inc. v. AV Finance, Inc., CV 01-180-BR (Opinion, Feb. 3, 2003).

Plaintiff's Counsel:

D. Gary Christenson (Local)

Defense Counsel:

Albert J. Bannon

Intellectual Property

The maker of a high pressure water hose called "Coilhose" was not entitled to trademark protection for the name as a matter of law.

Judge Janice M. Stewart determined that while the name was not generic, it was descriptive and, absent evidence of secondary meaning, could not seek protection under the Lanham Act. The court particularly noted the "crowded field" of similar marks in the industry. Coilhose Pneumatics, Inc. V. Fast Forward Concepts, Inc., CV 01-1306-ST (Opinion, Jan. 28, 2003).

Plaintiff's Counsel:

Jonathan R. Gill

Defense Counsel:

Douglas G. Houser;

Rene Rothage

Constitutional Law

In Kyei v. Beebe, Civ. No. 01-1266-PA, Judge Owen M. Panter granted summary judgment against plaintiff Kofi O. A. Kyei on all but one claim. Kyei, a native and citizen of Ghana, claimed that six employees of the INS violated his constitutional rights when they detained him, allegedly seized money from him, and denied his request for release on bond. Kyei

claimed that Yamhill County violated his constitutional rights during two weeks of detention at the Yamhill County Jail. Kyei also brought claims against the United States under the Federal Tort Claims Act.

Judge Panter held that the INS employees were entitled to qualified immunity for Kyei's arrest and detention because the law governing INS detention of aliens was not clearly established. When the INS arrested Kyei in August 1999, the INS had determined that Kyei was an "excludable" alien and issued a final order of deportation. In Barrera-Echavarria v. Rison, 44 F.3d 1441 (9th Cir. 1995) (en banc), the court held that excludable aliens had no constitutional right to procedural due process. Judge Panter ruled that the INS employees could not have anticipated that a judge of this court would decide that Kyei did have a constitutional right to an individual bond hearing, or that two years later, on remand from the Ninth Circuit, an immigration judge would determine that Kyei was not an excludable alien. Judge Panter also held that two INS officials had acted as judges in denying Kyei's request for release and were entitled to both quasi-

judicial and qualified immunity. However, Judge Panter held that disputed issues of material fact prevented summary judgment on Kyei's Bivens claim that INS agents had seized money from him and never returned it.

Judge Panter granted the United States' motion for summary judgment on Kyei's claims under the Federal Torts Claims Act. Judge Panter held that under 28 U.S.C. § 2680(c), the United States retained sovereign immunity on Kyei's claim for property allegedly seized during his arrest. Judge Panter also held that under Oregon law, the INS agents' arrest and detention of Kyei were privileged.

Judge Panter granted Yamhill County's motion for summary judgment. He held that Kyei's constitutional rights were not violated by three days' detention in a cell block used for administrative segregation, or by failure to provide Kyei with 3200 calories per day for two weeks. Opinions issued December 13, 2002 (Yamhill County) and February 4, 2003 (federal defendants).
Plaintiff's Attorneys: Elden Rosenthal, Theodore Sumner
AUSA: Judith Kobbervig
Yamhill County: Robert Wagner, David Lewis, Robert Beatty-Walters